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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/758,484

01/15/2004

Kevin Curtis Griffin

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EXAMINER

THOMAS, SHANE M

ART UNIT

PAPER NUMBER

2186

DATE MAILED: 07/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/758,484	GRIFFIN ET AL.	
	Examiner	Art Unit	
	Shane M. Thomas	2186	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Remarks

Prosecution of this application has been assumed by Examiner Shane Thomas.

This Office action is responsive to Applicant's amendment/response filed 5/15/2006.

Claims 1-35 remain pending. Applicants' arguments and Rule 131 Affidavits have been carefully considered, but they are not persuasive/insufficient to place the claims in condition for allowance. Accordingly, this action has been made FINAL.

All previously outstanding objections and rejections to the Applicant's disclosure and claims not contained in this Action have been respectfully withdrawn by the Examiner hereto.

Response to Amendment

The affidavit filed on 5/15/2006 under 37 CFR 1.131 has been considered but is ineffective to overcome the Burton et al. (U.S. Patent Application Publication No. 2005/0091391) reference.

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Burton reference to either a constructive reduction to practice or an actual reduction to practice. Applicant/Inventors merely discuss throughout [each of] pages 1-3 of the signed Rule 131 affidavits a brief overview of the claimed invention while only stating that at some point prior to October 28, 2003 (the filing date of the Burton reference), the invention of the Inventors was conceived (paragraph 1) and submitted to the employer (paragraph 6). None of the steps citing diligence of paragraph 7 are accompanied with specified

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dates to show diligence. The entire period for which diligence is required (time period just prior to reference date - 10/28/2003 - until the reduction to practice - commonly the filing of the application) must be accounted for by either affirmative acts of acceptable excuses with actual dates being given. The present affidavit submits no such evidence regarding dates of the supposed diligence stated. Further, the Exhibit A, attached to the affidavit, only supplies a summary of the invention and does not disclose any dates associated with the inventive idea.

It is the Examiner's conclusion that due to insufficient evidence contained within the Rule 37 C.F.R. §1.131 Affidavit to support a showing of diligence, the affidavit to overcome the prior art reference of Burton. As such, the 35 U.S.C. 102(e) rejection has been maintained as discussed below for Applicant's reference.

Response to Arguments

Applicant's arguments filed 5/15/2006 have been fully considered but they are not persuasive. Applicant has only argued that the Rule 131 Affidavit has overcome the prior art reference of Burton and has not supplied additional arguments regarding any of the applied references.

Claim Objections

Claims 33 and 35 are objected to because of the following informalities:

As per claims 33 and 35, the term --recordable medium-- should be amended to --recordable type medium--, as stated in Applicant's originally-filed specification on page 11, lines 4-8. Applicant is reminded of 37 C.F.R. 1.75 (d)(1) which states that the claim or claims must conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

Claims 32 and 34 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. It is the present stance of the Office that merely amending the term --signal bearing medium-- to --tangible signal bearing medium-- is insufficient to overcome a 35 U.S.C. §101 rejection for nonstatutory subject matter. To overcome this rejection, the Examiner recommends amending claims 32 and 34 to incorporate the subject matter of claims 33 and 35, respectively. Specifically, amending the term --tangible signal bearing medium-- to --recordable type medium-- is sufficient in overcoming the §101 rejection. Further, care should be made when amending the claims to incorporate the subject matter of claims 33 and 35 as the phrase --includes-- is open-ended and synonymous with "comprising" (MPEP §2111.03), and should not be included in the amendment to claims 32 and 34 in order to overcome the §101 rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-4, 6-9, 12-14, 16-21, 23-26 and 29-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Burton et al (US 2005/0091391).

a. As for claim 1 Burton discloses

- i. Creating a group including a plurality of update requests (Par. 39 Lines 8-13, Par. 40);
- ii. Concurrently completing the plurality of update requests of the group (Par. 43); and
- iii. After completing the plurality of update requests, completing a subsequent update request (Par 59 Lines 6-9, Par. 41).

b. As for claim 17 Burton discloses

- iv. A processor (Par. 29); and
- v. Program code communicating with the processor configured to process a plurality of update requests by initiating creation of a group (Par. 40)
- vi. including a plurality of update requests (Par. 39 Lines 5-6)
- vii. having no order dependency (Par. 39 Lines 9-13, Par. 43),

- viii. concurrently initiating completion of the plurality of update requests (Par. 74 Lines 19-24), and
 - ix. initiating completion of a subsequent update request (Par 59 Lines 6-9, Par. 41).
- c. As for claim 2 and 19 Burton discloses
 - x. Completing a subsequent update request includes creating a subsequent group (Par. 40-43).
- d. As for claim 3 and 20 Burton discloses
 - xi. Creating the group further includes creating a group that includes a plurality of requests initiated at a plurality of applications (Par. 28 Lines 3-6).
- e. As for claim 4 and 21 Burton discloses
 - xii. Creating the group further includes updating a count associated with a number of the plurality of update requests (Par. 49).
- f. As for claim 6 Burton discloses
 - xiii. Creating the group further includes updating a status indicative of whether the group is active (Par. 74 Lines 13-17).
- g. As for claim 7 and 24 Burton discloses
 - xiv. Creating the group further includes assigning a group number to an update request of the plurality of update requests (Par. 40).
- h. As for claim 8 and 25 Burton discloses
 - xv. Completing the plurality of update requests further includes issuing an update request of the plurality of update requests (Par. 59 Lines 1-6).

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- i. As for claim 9 and 26 Burton discloses
 - xvi. Creating the group further includes reading a group number from an update request of the plurality of update requests (Par. 61 Lines 4-11).
- j. As for claim 12 and 30 Burton discloses
 - xvii. Creating the group, completing the update requests and completing the subsequent update further comprises creating the group, completing the update requests and completing the subsequent update on a primary system (Par. 39, 40).
- k. As for claim 13 and 29 Burton discloses
 - xviii. Completing the update requests and completing the subsequent update further comprises creating the group completing the update requests and completing the subsequent update on the backup system (Par. 57).
- l. As for claim 14 Burton discloses
 - xix. Synchronously processing a plurality of groups of update requests (Par. 38 Lines 1-18); and
 - xx. Asynchronously processing the update requests in each group (Par. 38 Lines 18-21).
- m. As for claim 16 Burton discloses
 - xxi. Processing the groups further includes assigning a group number to an update request of the plurality of update requests (Par. 40).
- n. As for claim 18 Burton discloses
 - xxii. The backup system is peripheral from the primary system (Par. 28 Lines 1-3).

- o. As for claim 23 Burton discloses
 - xxiii. A memory accessible to the program code (Par. 30, Par. 60 Lines 1-5).
- p. As for claim 31 Burton discloses
 - xxiv. A processor (Par. 29);
 - xxv. Program code in communication with the processor configured to update data at a backup system that tracks updates made to a primary system by initiating the synchronous processing a plurality of groups of update requests (Par. 38 Lines 1-18) and
 - xxvi. initiating the asynchronous processing the update requests in each group (Par. 38 Lines 18-21).
- q. As for claim 32 Burton discloses
 - xxvii. Program code in communication with at least one of a primary and backup system (Par. 28),
 - xxviii. The program code configured to initiate creation of a group including a plurality of update requests (Par. 39 Lines 8-13, Par. 40) and
 - xxix. To concurrently initiate completion of the plurality of update requests (Par. 43), and
 - xxx. After initiating the completion of the plurality of update requests, the program code being further the program code being further configured to initiate completion of a subsequent update request (Par 59 Lines 6-9, Par. 41); and
 - xxxi. A signal bearing medium bearing the program code (Par. 28).
- r. As for claim 33 and 35 Burton discloses

xxxii. The signal bearing medium includes at least one of a recordable medium and a transmission-type medium (Par. 28).

s. As for claim 34 Burton discloses

xxxiii. Program code in communication with at least one of a primary and backup system (Par. 28),

xxxiv. The program code configured to initiate synchronously processing a plurality of groups of update requests (Par. 38 Lines 1-18),

xxxv. And to initiate asynchronously processing the update requests in each group (Par. 38 Lines 18-21); and

xxxvi. A signal bearing medium bearing the program code (Par. 28).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 5 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burton et al (US 2005/0091391).

t. As for claims 5 and 22 Burton discloses

xxxvii. Selectively activating the method of claim 1. *There is no point where Burton specifically discloses this, but it is readily obvious that the system must be started at some point in time (this point in time is selected by something or*

someone) in order to operate at all, and in doing so would be activating the system and method in the manner claimed.

4. Claims 10, 11, 15, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burton et al (US 2005/0091391) in view of Souder et al. (US 5,937,414).

u. As for claims 10, 15 and 27 Burton discloses the depended upon claims 1, 14 and 17 respectively but fails to disclose the following limitation which is taught by Souder:

xxxviii. Completing the plurality of update requests further includes holding the subsequent update request (Souder Col. 6 Line 66 – Col. 7 Line 2).

xxxix. It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the update holding taught by Souder with the mirroring system disclosed by Burton because both systems utilize both synchronous and asynchronous mirroring techniques and the update holding further prevents the corruption of data.

v. As for claims 11 and 28 Souder et al. teach

xl. Completing the subsequent update request further includes releasing a hold on the subsequent update request (Col. 7 Lines 2-9).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shane M Thomas whose telephone number is (571) 272-4188. The examiner can normally be reached M-F 8:30 - 5:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matt M Kim can be reached at (571) 272-4182. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Shane M. Thomas



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